

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE: . Case No. 22-90018-bdrj  
. Chapter 11  
SUNGARD AS NEW HOLDINGS LLC, .  
and SUNGARD AVAILABILITY .  
SERVICES, LTD., . 515 Rusk Street  
. Houston, TX 77002  
Debtors. .  
. Monday, October 17, 2022  
. . . . . 2:00 p.m.

TRANSCRIPT OF NOTICE OF (I) SUCCESSFUL BID AND SALE HEARING  
AND (II) RESET OF COMBINED HEARING TO APPROVE THE ADEQUACY OF  
THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN [705]  
BEFORE THE HONORABLE DAVID R. JONES  
UNITED STATES BANKRUPTCY COURT JUDGE

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1



1 (Proceedings commence at 2:00 p.m.)

2 THE COURT: Officially, good afternoon, everyone.  
3 This is Judge Jones; the time is two o'clock Central. Today is  
4 August [sic] the 17th, 2022. This is the docket for Houston,  
5 Texas. On the two o'clock docket we have the jointly  
6 administered cases under case number 22-90018, Sungard AS New  
7 Holdings.

8 Folks, please don't forget to record your electronic  
9 appearance. That's a quick trip to my website. Couple mouse  
10 clicks. You can do that at any time prior to the conclusion of  
11 the hearing. But that is the way that we will record your  
12 appearance this afternoon.

13 The first time that you speak, if you would, please  
14 state your name and who you represent. It really does help the  
15 court reporters do what is a very difficult job.

16 If you came in late, I have activated the hand  
17 raising feature. If you haven't already done so and know you  
18 are going to be speaking, if you could go ahead and give me a  
19 "five star," I will get you unmuted. Obviously, you can change  
20 your mind at any point in time.

21 And finally, we are recording these in Courtspeak,  
22 we'll get the audio of this afternoon's hearing up on the  
23 docket shortly after the conclusion of the hearing this  
24 afternoon.



1 All right. Ms. Lahei, are you starting us off this  
2 afternoon?

3 MS. LAHEI: I am, Your Honor. Good afternoon.  
4 Meredith Lahei, Akin Gump Strauss Hauer & Feld, counsel for the  
5 Debtors. I'm joined today by my partners Phil Dublin and Marty  
6 Brimmage, and my colleagues Zach Lanier and Kevin Zuzolo.  
7 I would like, if I could, Your Honor, to make a few opening  
8 remarks before I turn the proceeding over to my colleagues.

9 THE COURT: All right.

10 MS. LAHEI: Today is an important day, obviously, for  
11 Sungard. We are seeking approval of the sale of our marquee  
12 assets to 11:11, who you might recall is also the buyer of our  
13 CMS business. We are also seeking confirmation of our plan,  
14 which will now be implementing the winddown of these estates.

15 As Your Honor has seen, this has not been an easy  
16 process. These are complicated, interconnected assets that  
17 operate in a fairly niched space. Indeed, the last time we  
18 appeared before Your Honor, we did not know if we would be  
19 successful at selling the assets or if the lenders would be  
20 taking the assets back through a plan of organization.

21 Assuming Your Honor approves the sales we presented  
22 today, we will be selling substantially all of our assets to  
23 two buyers and distributing the proceeds through a liquidating  
24 plan. On the plus side, the sale of these businesses will  
25 ensure continued employment for many of our employees and many



1 of our contract counterparties and landlords will see that our  
2 contracts are going to be assumed and cure amounts paid. We  
3 also expect the sales will generate proceeds sufficient to pay  
4 our admin, priority, and secured claims, which leaves a small  
5 distribution to made for our first lien credit agreement claim  
6 holders.

7           On a less than positive side, Your Honor, as we  
8 previewed at least at the last hearing, I am sorry to report  
9 that there will not be a distribution made past the first lien  
10 credit agreement claims, meaning that there will be no  
11 distribution made to the second lien credit agreement claims or  
12 to general unsecured creditors. Of course, this has been a  
13 very difficult reality for the company and its constituents,  
14 but it's been a reality that of course has been dictated by the  
15 sale processes themselves, sale processes that carried on far  
16 longer than the timeline contemplated by our bid procedures.

17           Given all of the facts and circumstances at play, we  
18 do truly think that this is the best possible outcome available  
19 for all stakeholders, including our employees and our contract  
20 counterparties.

21           In a minute, I will turn this podium to Mr. Lanier  
22 and Mr. Zuzolo, to provide the Court with additional facts and  
23 evidence in support of the release that we're requesting.  
24 Before I do that, however, I would like to do two things.



1 First, I want to make Your Honor aware of a service  
2 issue that was brought to our attention yesterday.  
3 Unfortunately, as a result of miscommunication between certain  
4 of the debtor's advisors, the notice of confirmation hearing  
5 and the notice of filing of the plan supplement were not served  
6 by U.S. Mail on the master service list. These papers were  
7 filed on the docket prior to ECF upgrade outage, and the  
8 parties that were receiving notice by ECF didn't receive those.  
9 This includes obviously any parties who filed an objection.

10 However, Your Honor, due process is important. The  
11 debtor wants to address any concern about receipt of notice by  
12 any other parties in a way designed to ensure that those  
13 parties were not timely served, have exactly the same  
14 opportunity to review the documents and raise objections as  
15 those who were served by ECF. Mr. Zuzolo will walk you through  
16 the mechanics that we're proposing, but I did want preview that  
17 issue for Your Honor.

18 And second, at the risk of jumping the gun a bit on  
19 today's activities, I wanted to acknowledge a few people and  
20 parties who have made today and really these Chapter 11 cases  
21 possible. First and most importantly, I would like to thank  
22 our management team. That is Mike Robinson, our CEO, who you  
23 will see on the screen before you. T.J. Anderson, our CFO, and  
24 Bill Price, our general counsel. We are, I can personally  
25 attest to the fact that these guys have been working seven days



1 a week, 24 hours a day, around the clock to deliver the best  
2 possible results for our stakeholders. Among other things,  
3 they have understood and prioritized, and I can't emphasize  
4 that enough, the importance of the workforce here and they have  
5 done their best to ensure minimal disruption of the lives of  
6 our employees. They care about these businesses; they care  
7 about the folks that run these businesses. I think that's  
8 reflected in the results of the sale process in the cases that  
9 you see here today.

10 In addition to our management team, I would also like  
11 to extend a thank you to our primary creditor constituency, and  
12 particular to our term lenders and our creditor committee and  
13 their respective advisors, (indiscernible). Those groups  
14 understood, as I'm sure Your Honor has seen, early on what the  
15 (indiscernible) for these cases, they both just got it out of  
16 the gate. They did their jobs. We think they did them well.  
17 And they did them in a way that did not create unnecessary  
18 distractions or expense in a case that frankly could not afford  
19 any incremental cost. The support of both of those groups has  
20 been critical to our ability to propose a plan in these Chapter  
21 11 cases and we are very grateful for their approach.

22 With that, unless Your Honor has any questions for  
23 me, I will cede the podium to Mr. Lanier in the first instance,  
24 to present the sales transaction.



1 THE COURT: All right, thank you. I may come back to  
2 you, but let me hear what your other two colleagues have to  
3 say. Mr. Lanier, you're starting us off?

4 MR. LANIER: Thank you, Your Honor, and good  
5 afternoon. Zach Lanier, Akin Gump Strauss Hauer & Feld for the  
6 debtors.

7 As Ms. Lahei mentioned today, we are seeking approval  
8 of a sales transaction to 11:11 Systems Inc. This sale will be  
9 the third and final significant sale that's happened in these  
10 Chapter 11 cases, and the second sale in these cases to 11:11  
11 Systems.

12 As Your Honor will recall, on August 31st, this Court  
13 approved a sale of the debtor's co-location work services  
14 business, to 365 Data Centers. And on September 14th, this  
15 Court approved a sale to 11:11 for substantially all assets  
16 related to the debtor's Cloud and Managed Service business  
17 which was, as Your Honor will recall, we refer to as CMS.  
18 With the sale of debtor's network, location, and CMS business  
19 units, the debtor's primary managing business unit is their  
20 after-recovery services. What sometimes we refer to as the  
21 "evil assets" in this document. These assets were thoroughly  
22 marketed both prior to and during the Chapter 11 case. At the  
23 original bid deadline of July 7th, under the bidding procedures  
24 this Court approved on May 11th, the debtors received no actual  
25 bids for the recovery services business. As stated at prior



1 hearings and pleadings, the debtors were preparing to  
2 reorganize around the recovery services business but were also  
3 continuing to evaluate the potential alternatives for this  
4 business.

5           At the discussion and diligence process, 11:11  
6 Systems progressed on the CMS transaction, 11:11 emerged as a  
7 potential buyer for the "evil assets." Ultimately, after weeks  
8 of good faith and arm's length negotiations with 11:11 and a  
9 consultation with the consultation parties, the debtors  
10 executed an asset first agreement with 11:11 Systems on  
11 September 30th. The debtors announced the sale thereafter on  
12 October 5th and filed the notice on the docket with the  
13 executed APA -- we shared the terms of that APA on -- at Docket  
14 Number 705.

15           The main terms of the sale are as follows: The  
16 buyer, 11:11, will pay \$60 million in cash at the closing,  
17 assume liability related to the purchase of assets for a period  
18 from and after closing, and pay cure costs associated with the  
19 purchase contract, subject to a sharing mechanism that kicks in  
20 once the cure cost exceeds \$7 million.

21           Importantly, as Ms. Lahei mentioned, the buyer will  
22 also be offering employment to a large segment of the debtor's  
23 current workforce. And the APA requires that those offers be  
24 made on substantially similar terms in the (indiscernible).



1           Significantly, the buyer is required to pay the  
2 debtors an amount equal to \$1.5 million per week, commencing on  
3 October 18th and continuing on Monday of each week until the  
4 closing occurs. This payment, as Your Honor will appreciate,  
5 is the key piece to the bargain that will inform the debtor's  
6 decisions to proceed with the sale of the recovery services  
7 business and help ensure or give lender support for the sale.

8           Based on the results of the debtor's sale process,  
9 the debtors believe that the sale of recovery service business  
10 to 11:11 represents the highest and best offer for the purchase  
11 of assets. Today's sale is also the capstone, as Ms. Lahei  
12 mentioned, of the debtor's sale efforts. And with approval of  
13 this sale, the debtors will still remain in business here, and  
14 will proceed to ensure that proceeds from the sale wind down.

15           To that end, the buyers of 365 and 11:11 and their  
16 respective advisors have been working around the clock to close  
17 a very complex set -- complex and interconnected set of sale  
18 transactions.

19           While selling the recovery services to 11:11  
20 simplifies those transactions, each remain complicated assets  
21 and services that as of the petition date were sold as an  
22 integrated unit.

23           If the Court approves today's sale, and to close the  
24 sale, the sale of the co-location network services, Business  
25 365, and the CMS Recovery Services Business, to 11:11 as fast



1 as humanly possible. What we anticipate for that closing to  
2 occur soon, but we cannot predict the exact date at this time.  
3 In any event, the requirements of our proposed sale order will  
4 a file notice of closing one business day prior to closing.

5 With respect to the cure costs, the buyer's deadline  
6 to designate contracts for assumption of assignment was five  
7 business days prior to today's hearing. Given the holiday last  
8 week, that meant that it would be filed -- proposed assumed  
9 contracts on October 7th. That coincided with the period in  
10 which the Court's DPS system was down, so we filed that in  
11 accordance with the chamber's procedures and instructed  
12 (indiscernible) served on the effective counterparties and the  
13 master (indiscernible).

14 There were a few clean-up changes that were made to  
15 the list between then and today's hearing, and we filed a  
16 revised list, I believe, as of speaking at Docket Number 755.  
17 Those clean-ups were certain contracts where the information  
18 was listed incorrectly. And there were a few agreements that  
19 were inadvertently left off that we intended to include. But  
20 all the counterparties that further wished those changes were  
21 made, had notice of what those changes, and those changes were  
22 in large part requested by those counterparties.

23 As to the prior sale, of what the counterparties at  
24 large have been noted, that the contracts may be assumed since



1 June 13th and June 14th of the summer, when we filed the  
2 initial list of the potentially assumed contracts.

3 Last night, Docket Number 743 filed a brief reply in  
4 support of the sale. As we say in the reply and as with our  
5 past sales, none of the objections have been filed, or served  
6 that the sale should not be approved or that the sale is not in  
7 the best interest of the estate. All of the debtor's key  
8 stakeholders, including the competition parties, are supportive  
9 of the sale.

10 That being said, there were certain cure related  
11 objections that are applicable to the 11:11 sale. We have  
12 attempted to summarize those for the benefit of the Court and  
13 interested parties, in the exhibit that was attached to the  
14 reply. As noted, these objections have either been resolved or  
15 adjourned to a later date, to allow the parties time to agree  
16 to consensual resolution of the issues raised by those  
17 objections.

18 In addition to the objections listed on the chart, I  
19 will also note for the record that we received informal  
20 comments for an objection from IBM Capital. Because they did  
21 not file a formal objection, I represent that I will make a  
22 statement on the record that their informal objection is  
23 preserved as the parties continue to work out those issues.

24 Finally, this afternoon we received an informal reach  
25 out from the landlord for a lease at 777 Carlstadt, New Jersey,



1 which is subject to assumption assignment in connection with  
2 the sale transaction. We understand that those discussions are  
3 active, but the latest as of minutes before this hearing was  
4 that we understand that the landlord and the buyer, 11:11, have  
5 reached an accommodation that is different from what was in the  
6 lease, or the APA, but our understanding of that accommodation  
7 is that as a condition to closing, it's providing an LC, a  
8 security deposit for that lease. The parties have agreed that  
9 a cash deposit would suffice until such time as a replacement  
10 LC could be obtained.

11           You know, from the debtor's perspective, this is the  
12 first of course, we're hearing on this, so we're still reacting  
13 to it. But that is our understanding of what the parties  
14 agreed, and as long as there is no liability for the debtor's  
15 estate, I think he can get comfortable with the resolution that  
16 the parties 11:11 and the buyer have reached.

17           With that, I will -- I have taken up enough airtime  
18 for now, I will let others speak if there's anything that  
19 others wish to say.

20           THE COURT: Certainly. So I will make the circle for  
21 everyone in just a second. So I want -- help me -- I want to  
22 make sure I have this in my mind. So you've got -- you want to  
23 close this as soon as you possibly can, but you've also got a  
24 number of cure issues and maybe not so great notice out there.  
25 How are going to reconcile all of that?



1 MR. LANIER: Your Honor, we are in active discussions  
2 with all of the parties about these issues. You know, the  
3 debtors are cognizant of the notice issues. They are cognizant  
4 of the open cure objections. And we're cognizant of the need  
5 to make sure that we don't trip over anyone's due process  
6 rights. So while we're intending to close as soon as humanly  
7 possible, the debtor's intent is not to close in such a way  
8 that would damage or impair any of those parties' rights.

9 THE COURT: Now, do I have counsel for 11:11 on the  
10 video?

11 MR. PENN: Your Honor, John Penn on behalf of 11:11.

12 THE COURT: So, Mr. Penn, I want to help you get this  
13 done. And so to the extent that you can give me information,  
14 it would really be helpful. Do you have a realistic closing  
15 date?

16 MR. PENN: We are doing everything possible to close  
17 by tomorrow.

18 THE COURT: Ah. Okay.

19 MR. PENN: (Indiscernible.)

20 THE COURT: And so, is it --

21 MR. PENN: And moving heaven and earth and getting  
22 people in position to go.

23 THE COURT: Got it. And so you -- is it a fair  
24 statement to say that you are going to close on a core group of  
25 assets with the understanding that with respect to those leases



1 and contracts that are kind of up in the air, you are going to  
2 do your best to make good business deals. And if you can't,  
3 you'll proceed ahead. And if you do, then you'll take them.  
4 Is that a fair statement?

5 MR. PENN: That is a fair statement, because the  
6 agreement allows for the contract -- if there is no deal with  
7 the separate parties, the agreement allows for them to be moved  
8 over onto the excluded contract.

9 THE COURT: No, I got that. And let me finish the  
10 thought and then you'll understand why I'm asking these  
11 questions. What I was going to propose, if it's helpful, is to  
12 give you a status hearing, a scheduling hearing -- call it  
13 whatever you want. In, let's say, two weeks. And I will have  
14 the debtor send out a notice that says, with a final version of  
15 the assumed -- or the contracts and leases to be assumed, it  
16 says, "You've got to stand up and wave your hand by this  
17 hearing date, or you have forever waived your right to  
18 challenge a cure amount or anything." And obviously, if you're  
19 in communications and you get deals done, you don't need that  
20 hearing. But it's -- what I was trying to do, was to figure  
21 out a way that I could give you a definite end to knowing  
22 exactly where you stood. Now, if this isn't helpful at all,  
23 please tell me and I'm happy not to try and help.

24 MR. PENN: I'm hearing this notice issue for the  
25 first time at the hearing, which is a bit of surprise. To the



1 extent that the Court was thinking of that, I would put a  
2 caveat in there that if they had not otherwise been served for  
3 the ECS system, because I wouldn't want to re-open the door for  
4 anyone that had received that one.

5 THE COURT: No, this -- absolutely. This is for --  
6 this is only to minimum due process and if folks have had  
7 minimum due process and haven't acted, then that's -- it's not  
8 intended to benefit those. It's just to the extent that anyone  
9 got omitted, and you need a deadline by which you can start  
10 making business decisions, or your clients do. And I get that.  
11 And to me, that just seemed like a rational balance, is to give  
12 you a quick hearing, have the Debtors serve out a final list,  
13 even if it's somewhat duplicative of what got served today or  
14 yesterday. All fine by me. More notice is always better. And  
15 that way you then -- you know exactly where you stand at a  
16 relatively quick amount of time. Does that sound rational to  
17 you?

18 MR. PENN: Yep. Your Honor, I believe that we are in  
19 violent agreement with -- if we can build the caveat in, just  
20 so we don't re-open the door. That's all I want.

21 THE COURT: No, no, no. It was never intended to go  
22 back and start over. It was only intended to supplement anyone  
23 that may have been missed. That was all.

24 MR. PENN: Understood.

25 THE COURT: All right. Thank you.



1 MR. PENN: Just trying to do the drafting at the  
2 front end.

3 THE COURT: No, absolutely. And Mr. Zuzolo, I may  
4 have stolen some of your thunder. Is this along the lines of  
5 what you were thinking, or do you have something that is just  
6 more efficient?

7 MR. ZUZOLO: No, Your Honor, that is exactly along  
8 the lines of what we were thinking. We have added to the  
9 proposed confirmation order that was filed slightly before this  
10 hearing. The provision that is similar to this, that I was  
11 planning to walk through at that portion of the hearing. But  
12 your gist of what you've described is what we are intending to  
13 do for parties.

14 THE COURT: And I didn't see that amended order had  
15 been filed. Can you tell me the paragraph? And I have --

16 MR. ZUZOLO: So this is Docket 753.

17 THE COURT: 53? Or 54? No, you're right, 54 is the  
18 new sale order. You're right. Sorry. So 753-1.

19 MR. ZUZOLO: Yes. Correct. And this at the end of  
20 the proposed order at Paragraph 37. And Your Honor, I'll just  
21 note that the reason we built these protections into the  
22 confirmation order is because we didn't actually believe there  
23 was a significant issue with respect to the sale notice. The  
24 sale notice that did not go out to the appropriate service  
25 list, actually was -- there was a subsequent notice distributed



1 two days later on October 7th, that did serve the appropriate  
2 parties with respect to the sale hearing. So we didn't quite  
3 have the same issue with respect to the notice of the  
4 confirmation hearing and the objections thereby, as we did with  
5 the sale.

6 THE COURT: Right.

7 MR. ZUZOLO: And I'm happy to provide some more  
8 context around this particular provision, it's modeled off of a  
9 provision from the (indiscernible) that Judge Isgar used when  
10 there was a similar notice concern with respect to a -- it must  
11 have been a 24 hour pre-pack, but it was a very quick pre-pack  
12 case where there was a concern that appropriate parties may not  
13 have gotten the opportunity to object to confirmation.

14 THE COURT: And so tell me -- I've read Paragraph 37,  
15 with respect to any issues you have, with respect to rejection  
16 and assumption issues. How does this address that?

17 MR. ZUZOLO: Your Honor, this is not intended to  
18 address assumption and rejection issues with respect to the  
19 sale. As I noted, and Mr. Lanier can correct me if I'm wrong,  
20 I believe the assumption of rejection - or the assumption with  
21 respect to the ease of sale, was properly served and there were  
22 not any issues.

23 THE COURT: I thought that Mr. Lanier told me that  
24 you were making changes even as of today. Did I misunderstand  
25 that?



1 MR. LANIER: Your Honor, to clarify, the changes that  
2 were made today, there are -- I want to say there are five  
3 changes. Three of those relate to a counterparty who we listed  
4 the wrong contract information on. They were on the list, and  
5 they were served the notice. When they reached out after  
6 serving and said, hey how you got that date wrong.

7 THE COURT: Okay, so you --

8 MR. LANIER: Or hey, you got the title of this  
9 agreement wrong.

10 THE COURT: Right.

11 MR. LANIER: And then that was one set of issues.  
12 The other set -- the other issue was there was one contract  
13 that was included that shouldn't have been included because it  
14 is a terminated contract, so there is nothing to assume. So  
15 that was taken off the list. And then there was one  
16 counterparty who the debtors were of the view that there was  
17 only one specific agreement with that counterparty, but there  
18 are actually two agreements with that counterparty, and we just  
19 missed the second one, and that was pointed out to us by that  
20 counterparty. In the notice we filed, and I noticed very, very  
21 shortly before this hearing.

22 But in the notice, we saw right before this hearing,  
23 we clearly delineated, you know, certain contracts. One  
24 contract was removed because it is no longer an executory  
25 contract. A couple contract information was corrected, and a



1 couple contracts were added. All of that was done with the  
2 counterparty's knowledge and consent.

3 THE COURT: Fair enough. The most important thing  
4 that you were engaged with those folks that were affected -- is  
5 what you are telling me.

6 MR. LANIER: Exactly.

7 THE COURT: Got it. All right. Then Mr. Penn, let  
8 me ask you, I'm -- I may have worried you unnecessarily, and I  
9 if I did so, my apologies. The offer -- and you're free once  
10 we get onto the next part of this -- you are free to step off  
11 and talk to your team or your client as may be appropriate.  
12 And if you decide that you need some -- if you would like to  
13 have a hearing out there, just to deal with any issues, if it's  
14 helpful, I'm more than happy to do it. And if it's  
15 unnecessary, there is obviously always someone else who wants  
16 the time.

17 MR. PENN: Absolutely. Thank you, Your Honor.  
18 Probably after the conclusion of the hearing we can get back in  
19 touch with the Court, after we've talked to both our team and  
20 the Akin team. At some point we're going to need a cutoff  
21 point to deal with any parties who we have not come to terms  
22 with, if there is outstanding adequate assurance or cure issue.  
23 And so just a question of mechanics of how to get about that  
24 process.



1 THE COURT: All right. Then, fair enough. Let me  
2 ask, is there anybody else that wants to be heard with respect  
3 to the sale motion or any particular cure issue that has been  
4 reserved or the method in which it's been reserved or the  
5 proposed way of resolving those issues?

6 MR. KULBACK: Your Honor, it's Jerry Kulback.

7 THE COURT: I'm sorry, I heard two folks at exactly  
8 the same time, and I couldn't distinguish either name.

9 MR. KULBACK: Jerry Kulback with Archer & Greiner on  
10 behalf of HCL America Inc.

11 THE COURT: Yes, sir.

12 MR. KULBACK: And HCL Comnet Services.

13 THE COURT: All right.

14 MR. KULBACK: Your Honor, we have filed a combined  
15 limited objection to the plan to the sale and to a motion --  
16 the 9019 motion to approve the rejection of a lease at the  
17 Houston, Texas Data Center. And we have been discussing that  
18 objection with counsel for the debtor as well as counsel for  
19 11:11. And I think that we have been able to preserve all the  
20 issues for a later date, but I do want to at least bring some  
21 things to Your Honor's attention in case they aren't resolved.

22 Your Honor may recall that HCL is a customer of  
23 Sungard and has equipment and data and its customers' equipment  
24 and data in seven data centers. Three of the leases for those  
25 data centers were assumed and assigned to 365 under the Bravo



1 sale, which was already approved, and those were: Richardson,  
2 Texas, 1500 Spring Garden Street in Philadelphia, and Smyrna,  
3 Georgia. But two of those leases are proposed to be assumed  
4 and assigned to 11:11 under the (indiscernible) sale that's  
5 before, Your Honor. That's the 777 Central Boulevard Carlstadt  
6 Data Center and 401 North Broad Street, Philadelphia. And two  
7 of the leases for two data centers are proposed at some point  
8 to be rejected, and those data centers closed, and that's  
9 Thornton, Colorado and Houston, Texas.

10 In no way is HCL trying to stand in the way of a plan  
11 confirmation or a sale, but what we are concerned with --  
12 significant concerns, is loss of data and disruption that would  
13 occur and havoc that would occur in the event that services  
14 would not continue to be rendered smoothly as the sale closures  
15 and the services are transitioned.

16 Our contract is proposed on the list of contracts to  
17 be assumed by 11:11 in connection with the sale. They are  
18 listed and it is my understanding that 11:11 wants to assume  
19 the entire business relationship that the debtors that  
20 currently have with HCL. And we are not -- we don't really  
21 have any objection to that; however, given that 11:11 is only  
22 taking two of the leases -- three of the leases went to 365 and  
23 two are being -- eventually will be rejected and those data  
24 centers closed. We have significant concerns exactly how this  
25 is going to work.



1           We have engaged with counsel to try to work through  
2 these issues on a business solution level, and in fact, my  
3 understanding, and it is listed in the APA, is that there will  
4 be a master services agreement and transition services  
5 agreement between the two buyers and the debtor that will  
6 account for some of the issues that we have as to exactly how  
7 this is going to look going full basis. We haven't seen those  
8 agreements yet. Those are really adequate assurance issues  
9 that I don't know if it was Mr. Zuzolo or other counsel,  
10 Mr. Lanier, had indicated, are adequate assurances being  
11 reserved for a later date in case we can't work through these  
12 issues.

13           With respect to the other two data centers that are  
14 proposed to be rejected, one of those, the Thornton, Colorado  
15 data center is to be rejected under the plan, as a contract  
16 eventually that is neither assumed -- is not being assumed in  
17 connection with either sale. So by default, it would be  
18 rejected.

19           My understanding, and we have recently received as of  
20 this morning a stipulation between the landlord and the debtor  
21 with respect to that data center, that it will remain open, and  
22 that lease will not be rejected at least until further order of  
23 the Court, and no sooner than January 31st will we have to  
24 vacate that facility. That should give us sufficient time. We  
25 have engaged with the landlord directly at that facility to try



1 to work something out. But we do want to indicate that that is  
2 -- was a concern of ours.

3 Houston, Texas, is also a concern because that is --  
4 on the 9019 motion -- I don't believe the 9019 motion is on for  
5 today. But just to lay it out, because these are all the same  
6 issues -- they're all transition issues, Your Honor, that we're  
7 concerned with. That one is proposed to be closed also at the  
8 end of January. We have engaged with Digital Realty, who is  
9 the landlord of that facility, to undertake providing services  
10 for us at that facility. Though that would -- none of this has  
11 come to pen to paper yet with any of the landlords or with  
12 11:11. 11:11 is certainly going to have to modify our master  
13 services agreement since they only are going to be providing  
14 services at five of the seven data centers we're currently at.  
15 And we certainly understand that and are willing to engage with  
16 everyone in that regard. But we do note for the record that,  
17 as of right now, if we aren't able to reach business solutions  
18 with everyone, January 31st is just not a doable time to find a  
19 new location and move with these amount of data that we're  
20 talking about.

21 As our objection that we filed, which is Document --  
22 Docket Number 723 indicates, and the supporting declaration of  
23 Prashanth Ponugoti that was filed at Docket 724, we would need  
24 at least a year to find and sufficiently smoothly transition  
25 some of this out.



1           We hope we never have to get there where these issues  
2 are before Your Honor, and hope we can get business solutions  
3 to all of this, but I did want to lay it out. And we did ask  
4 for one thing that I would -- and I did discuss this with  
5 Mr. Lanier prior to this hearing, is we just want to make sure  
6 while the stipulations, both under the 9019 motion and with the  
7 Thornton, Colorado landlord indicate that the leases will be --  
8 will not be rejected at least until January 31st, we would like  
9 assurances that services are actually going to be provided to  
10 HCL at least through that date. Whether it's through the  
11 debtor, 11:11 if the sale does close tomorrow, or 365, or under  
12 some sort of an agreement between them. I'm assuming this is  
13 part of a transition services agreement that's being negotiated  
14 behind the scenes that we haven't seen. But we do want to make  
15 sure that at least through January 31st, we are going to have  
16 services rendered under our contract that is proposed to be  
17 assumed assigned.

18           THE COURT: All right. So, help me understand,  
19 because it always -- it always bothers me when one party asks  
20 me for relief, and another party says, it's all okay with me,  
21 but I'm reserving all of my rights. I actually don't know how  
22 to reconcile those two, because every order I sign will  
23 terminate someone's rights. And so I want to make sure that I  
24 have a good understanding of whatever agreement it is that you  
25 have reached with the debtor, and what you anticipate --



1 MR. KULBACK: With respect --

2 THE COURT: -- happening. Is it that if you can't  
3 get comfortable with adequate assurance that you're reserving  
4 your right to come in and challenge the assumption? That, I  
5 understand. If it's something more than that, I need help.

6 MR. KULBACK: With respect to the sale issue with  
7 11:11, yes. If we can't get comfortable with adequate  
8 assurance and don't otherwise work a business deal, that we  
9 would be able to come in with respect to assumption of that  
10 contract.

11 THE COURT: All right. And, Mr. Lanier, I think that  
12 was contemplated, correct?

13 MR. LANIER: That's correct, Your Honor.

14 THE COURT: Okay.

15 MR. LANIER: At the end of the day, we think a  
16 business solution is available here because if the question is  
17 whether or not the contract would be assumed, I think the  
18 parties' incentives are clear. I think something can be struck  
19 here.

20 THE COURT: I totally understand that. You've made  
21 it very clear that you're reserving out what I'm just going to  
22 call "assumption issues." Whether it be cure costs, whether it  
23 be adequate assurance of future performance, whatever it might  
24 be, you've made it very clear that you're reserving those. But  
25 I want to make it also equally clear that there is nothing



1 that's being reserved beyond that in terms of the requested  
2 sale. I'm either going -- I'm going to rule on it or not.

3 MR. LANIER: That's the debtors' understanding.

4 MR. KULBACK: Understood, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. KULBACK: That -- and that is HCL's  
7 understanding, as well, Your Honor.

8 THE COURT: Okay. Thank you. That's -- I just  
9 didn't want there to be any misunderstandings.

10 So, I know there was at least someone else that  
11 wanted to address the Court.

12 MR. STATHAM: Steve Statham for U.S. Trustee,  
13 Your Honor. May I be heard?

14 THE COURT: Of course. And I know that there was  
15 another gentleman other than you, Mr. Statham. I see him  
16 laughing now. Got it. Okay. Mr. Statham?

17 MR. STATHAM: Thank you, Your Honor. Either from  
18 Mr. Lanier or Mr. Zuzolo, I think I understood that the  
19 concerns about noticing are perhaps resolved by a subsequent  
20 notice. On October 7th it went out to the entire general  
21 mailing list. Am I correct in that understanding, gentlemen?

22 MR. LANIER: Correct. On October 7th, the debtors  
23 served the notice of proposed assumed contracts in connection  
24 with the 11:11 sale on all the affected counterparties by email  
25 or mail. And then we also, as I understand, served that list



1 on our typical master service list.

2 MR. STATHAM: All right. Good. Thank you.

3 Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 All right. Mr. Geoghan? I think that you've got me  
6 muted? I think you still have the -- have you hit "five star"  
7 for me? You had not. There you go.

8 MR. GEOGHAN: How is that, Your Honor?

9 THE COURT: Loud and clear. Thank you, sir.

10 MR. GEOGHAN: Thank you, Your Honor. Your Honor,  
11 it's Dan Geoghan from Cole Schotz representing Russo  
12 Development -- Russo Family, excuse me. Your Honor, I'm here  
13 on the 777 Lease. And this is not an issue of notice  
14 (indiscernible) statement of reservation of rights, and we do  
15 need to discuss it a little bit. Your Honor, we learned this  
16 morning that the purchaser will be unable to provide the  
17 necessary adequate assurance. Meaning in the form of they're  
18 required to provide a letter of credit.

19 We contacted debtors' counsel today about it,  
20 (indiscernible) letter of credit or replacement letter of  
21 credit for security. We contacted debtors' counsel. They  
22 asked that we come to some level of agreement and give them  
23 some time, the representation and thought being that the sale  
24 would not close until sometime close to the end of October,  
25 giving 11:11 time to come up with an appropriate letter of



1 credit.

2           Your Honor, they have -- my understanding now from  
3 listing to Mr. Penn, they intend to close as soon as tomorrow.  
4 The parties are attempting to negotiate an appropriate business  
5 resolution. Possibly a cash deposit with time to get to a  
6 letter of credit, or otherwise. But nothing has been agreed  
7 to, papered, dealt with, and we just learned about it. And it  
8 gives me great pause and concern that there's going to be an  
9 attempt to close tomorrow, I don't have an agreement, I don't  
10 have security, but I do have someone's letter of credit, and  
11 that's the debtors.

12           And it gives us great pause as to what our next steps  
13 are if they really intend to try and close tomorrow. I don't  
14 have any expectation that we will have a commercial deal and  
15 arranged by then. And I can't have that letter of credit get  
16 terminated by the closing. I'm open to suggestions, possibly  
17 we draw the letter credit and hold it in escrow. But we need  
18 to -- I think if the closing is going to occur tomorrow, and  
19 this becomes a little bit more than a reservation of rights --  
20 and I apologize that we didn't file an earlier objection, but  
21 we thought we were all good until we learned it this morning.

22           THE COURT: All right. So if I could, I just want to  
23 make sure because you are far more engaged with this than I  
24 currently am. So you are concerned that the lease is assumed  
25 and assigned as part of a closing, and that somehow the letter



1 of credit, which currently acts as your security, is  
2 terminated, and you're left without replacement security. Is  
3 that a fair summary?

4 MR. GEOGHAN: Correct, Your Honor. And the parties  
5 are seeking to negotiate a replacement in the form of cash.  
6 But I am not positive, certain. We have no certainty that that  
7 will get done before closing tomorrow.

8 THE COURT: No, I got it. Mr. Lanier?

9 MR. LANIER: Your Honor, this is all happening  
10 somewhat in real time. I will say from the debtors'  
11 perspective, you know, our main view of all this is that we're  
12 here to protect the estate. If there's going to be a  
13 resolution that can be worked out and documented in time for  
14 closing tomorrow, then that's fine. If not, then, you know, we  
15 will take stock of where we stand at that point and make an  
16 appropriate decision that ensures that the debtors are not  
17 adversely affected by any agreement between the landlord, or  
18 not, and 11:11.

19 THE COURT: Sure.

20 MR. LANIER: I will also note that we anticipated  
21 this occurring, to some extent, under our asset purchase  
22 agreement, such that if 11:11 is not able to obtain a  
23 replacement LC and the landlord draws on such LC before -- as  
24 part -- before closing, then 11:11 has to reimburse us the  
25 amount that is drawn.



1           So we believe we can come to a solution here. I  
2 think it's just being worked out in real time, so I don't know  
3 if we have a firm perspective. But, you know, the last I heard  
4 was there was agreement between the landlord and the buyer  
5 that, of course, has not been documented. So I think it's  
6 probably best to reserve on this issues for now, until the  
7 parties have a chance to discuss further.

8           THE COURRT: All right. Mr. Penn, you want to weigh  
9 in on this at all?

10           MR. PENN: Yes, Your Honor. I can confirm that we  
11 are working diligently to reach the accommodation for the  
12 replacement security; that there are just logistical issues in  
13 obtaining a letter of credit issuance, which is why we were  
14 discussing the cash replacement with the landlord. As I  
15 understand it, although I'm not in that negotiation, that it's  
16 basically at the handshake phase, that it's moving towards  
17 documentation, and we're doing everything possible to get that  
18 documentation in place to be in a position to close as quickly  
19 as possible.

20           THE COURT: All right. And so let me ask you this.  
21 Is that -- if I ask you not to close before noon tomorrow, am I  
22 really -- are you going to be in a position to close before  
23 noon tomorrow?

24           MR. PENN: Noon might be a really, really, really  
25 heavy lift. But by the time the wires close, I remain



1 optimistic that we can get it done by then.

2 THE COURT: So here is -- and let me also ask  
3 probably the most important question, is the current LC secured  
4 by property of the estate?

5 MR. LANIER: The LC is under our ABL facility, so  
6 it's part of the DIP once it's drawn on.

7 THE COURT: All right. Seems to me there's a  
8 relatively easy fix to all of this, and probably just means  
9 there need to be a couple of other conversations this afternoon  
10 and this evening. What if I gave you a short hearing tomorrow  
11 at noon, and again ask that no close -- and again, if this is a  
12 problem, I can speed this up. Is that we have a short hearing  
13 at noon just to find out where we are, and if in fact we really  
14 do have a problem. Does that sound like a way to address  
15 this --

16 MS. LAHAIE: Your Honor --

17 THE COURT: Ms. Lahaie, yes, ma'am.

18 MS. LAHAIE: Your Honor, I apologize, and I apologize  
19 for speaking out of turn on Mr. Lanier's matter. And I --  
20 we're getting into territory that I was hoping we would be able  
21 to avoid on this court hearing and airing some dirty laundry  
22 Your Honor is probably sensing hasn't been fully dealt with  
23 behind the scenes.

24 I'll speak for the company. I do not think the  
25 company is going to be in a position to close tomorrow. And I



1 think Your Honor is getting a sense that there are more loose  
2 ends from the company's perspective than we would like to see  
3 to be in a position to close. And Mr. Lanier, I think, is  
4 effectively articulating that we need to make sure that  
5 whatever arrangements are reached, whatever accommodations are  
6 made, that nothing is being done that either impacts the value  
7 of the estate, or results in any kind of (audio interference)  
8 et cetera.

9           So I am hearing -- and this is certainly not the  
10 first time we've heard 11:11 articulate a very strong desire to  
11 close tomorrow. I have my own concerns, Your Honor. And I  
12 speak for the company and all of its advisors, I do not think  
13 we're going to be in a position to close tomorrow. So I'm  
14 happy to have a place holder hearing, Your Honor. I do not  
15 know that we're going to have all the issues teed up by noon  
16 tomorrow. But maybe there will be some issues we can ask for  
17 Your Honor to help out on. But it may also make sense. I  
18 think the parties have another call scheduled this afternoon to  
19 go through the closing list and figure out where we are on the  
20 issues. And I think there clearly are some businessperson  
21 discussions that still need to take place between our senior  
22 management and 11:11's senior management. But again, I was  
23 hoping not to get into this particular topic, but that's where  
24 we are.

25           THE COURT: Got it. Well, it seems to me -- and I



1 agree, I would rather have productive conversations going on in  
2 the background. But it just sounds to me as though if we had  
3 no closing before noon -- and again, I hear what everybody is  
4 saying. But I'll give you a -- I'll give you a hearing at  
5 noon. And I'm perfectly happy if you email Mr. Alonzo  
6 beforehand and say we've got this all worked out, don't need  
7 it. Or if we do need it, we can then get a better update with  
8 respect to schedule and where we are, and what remains  
9 outstanding. Because again, I think this is relatively easy to  
10 solve. But I need -- obviously I need folks to talk.

11 But with that, (audio interference) Geoghan, does  
12 that give you some level of comfort that you'll at least --  
13 you'll get to have another conversation, or two, or four,  
14 between now and tomorrow, before a closing occurs, to address  
15 this issue?

16 MR. LANIER: And you said Sean, if heard correctly.

17 THE COURT: I said Geoghan, and I am probably  
18 mispronouncing your name. My apologies.

19 MR. GEOGHAN: I'm sorry, Your Honor. And yes, if the  
20 parties can agree to -- and it's -- first, it's pronounced  
21 Geoghan.

22 THE COURT: Geoghan, I apologize.

23 MR. GEOGHAN: And second, if the parties can agree to  
24 not close before noon while we engage -- and I do represent the  
25 parties have engaged in some fashion. I think it's been very



1 limited at first, right now, to have a discussion around  
2 finding replacement security. If there's agreement not to  
3 close, we're happy to continue to discuss and see if we can  
4 come to an arrangement before then. As I said, my only concern  
5 is that someone decides to close and leaves us swinging. So  
6 that is our only concern. If the parties agree to hold off  
7 until noon, we'll agree to talk.

8 THE COURT: I don't need the parties' agreement.  
9 There won't be a closing before noon tomorrow, and you have a  
10 hearing tomorrow at noon. And we'll either have a --

11 MR. GEOGHAN: Thank you.

12 THE COURT: -- resolution, or we won't. Okay.

13 MR. GEOGHAN: Thank you, Your Honor. I appreciate  
14 that. That is more than acceptable to us.

15 THE COURT: And just so that we're clear, there may  
16 be a closing at 12:01. But there won't be a closing before  
17 noon.

18 MR. GEOGHAN: Thank you, Your Honor.

19 MR. KULBACK: Your Honor?

20 THE COURT: Yes, sir.

21 MR. KULBACK: Jerry Kulback for HCL again. HCL is in  
22 the 777 Carlstadt, New Jersey location, as well as Estée Lauder  
23 is one of our larger customers in that location. And our  
24 understanding is the lease is being assumed and assigned. I  
25 understand the issue of the replacement letter of credit. I



1 just want to make sure that if we confirm a plan today, that it  
2 will not be rejecting that lease to the extent that they can't  
3 otherwise work out an agreement regarding the letter of credit.

4 THE COURT: Well, nothing -- well, if they can't work  
5 out an acceptable way of adequate assurance of future  
6 performance, then rejection is absolutely in the near future.  
7 There isn't an alternative. But I think that this is an issue  
8 that there just needs to be another couple of conversations.  
9 This is not hard. This is easy. I think it's just time that's  
10 caused the difficulty. But you'll get an update tomorrow at  
11 noon.

12 MR. KULBACK: Thank you.

13 THE COURT: Yes, sir.

14 All right. I forgot who I was with. Mr. Lanier? Am  
15 I back to you?

16 Or let me just make -- complete making the circle.  
17 Is there anyone else that had an issue that they wanted to  
18 address?

19 Mr. Theisen, I think I see you talking? Hold on.  
20 Mr. Theisen, was -- did I see you talking? Hang on. How about  
21 now?

22 MR. THEISEN: Can you hear me, Your Honor?

23 THE COURT: Yes, sir Thank you.

24 MR. THEISEN: Thank you. Brett Theisen of Gibbons  
25 P.C. on behalf of Selective Insurance Company of America. I



1 understand that, you know, Mr. Lanier is reserving all the  
2 adequate assurance objections, which we have one pending. I  
3 just wanted to address two issues with the proposed sale order.  
4 I think Number 28 is, I guess as I read this is the order that  
5 was just filed, appears to be where those objections are  
6 preserved. It's just a little unclear. The language to me is  
7 a little unclear and ambiguous.

8 THE COURT: So let me --

9 MR. THEISEN: That's number --

10 THE COURT: So let me catch up with you. So you are  
11 looking at 754, Paragraph 28?

12 MR. THEISEN: Correct, Your Honor.

13 THE COURT: All right. Hold on just one second. Let  
14 me get with you. So I don't think 28 preserves anything.

15 MR. THEISEN: Well, I -- nor do I, Your Honor. I'm  
16 not sure if that was the attempt to preserve them, or if  
17 another amended order was going to be filed. But I think, if  
18 they're being preserved, it should be in the order.

19 THE COURT: Mr. Lanier.

20 MR. LANIER: Your Honor, I'm reading through the  
21 language again. I think that the issue might be the paragraph  
22 and the order that preserves parties' rights may only apply to  
23 a cure objection. To the extent that it's helpful to state on  
24 the record that we understand those cure objections to also  
25 encompass adequate assurance objections, that the status



1 reflected in the reply we filed on the docket as to specific  
2 contracts, including Mr. Theisen's client, then you know, that  
3 is the debtors' intent, that those objections are preserved.

4 THE COURT: Why don't we --

5 MR. LANIER: If we need to make modifications to the  
6 order to make that clear, we're happy to.

7 THE COURT: Could we just add a sentence that says  
8 any timely filed objections to the assumption of any executory  
9 contract or lease are preserved pending further order? That  
10 work?

11 MR. LANIER: That's fine with me, Your Honor. I  
12 think as long as it's clear that those objections have been  
13 marked as preserved.

14 THE COURT: Mr. Theisen, does that work for you?

15 MR. LANIER: Because some objections have been  
16 resolved.

17 THE COURT: No, of course. I -- so if you wanted to  
18 say any timely filed outstanding objections, I'm perfectly  
19 comfortable with that.

20 MR. LANIER: Excellent. Thank you.

21 MR. THEISEN: Thank you, Your Honor. And then the  
22 second issue is with Paragraph 42. This is specific to my  
23 client, Selective also objected to -- it has certain property  
24 at the Carlstadt, New Jersey facility that we object to being  
25 sold. That property belongs to Selective, not the debtors.



1 So we'd just like to be added to the list of parties in  
2 Paragraph 42.

3 MR. LANIER: Your Honor, that's fine. Part of the  
4 issue here is we have three different Carlstadt, New Jersey  
5 locations. So, without specificity, we may not know exactly  
6 which facility that is. It could be one that's being assumed.  
7 But obviously the point stands that the debtors cannot sell  
8 assets that don't belong to the debtors.

9 THE COURT: Yeah, totally agree. And it seems to me  
10 that you can make a tweak to 42 --

11 MR. LANIER: Yeah.

12 THE COURT: -- and it just becomes a non-issue. But  
13 I agree with your black letter statement of the law, you can't  
14 sell what you don't own.

15 MR. THEISEN: Very good. Thank you, Your Honor.  
16 That's all.

17 THE COURT: All right. Anyone else?

18 All right. Mr. Lanier, where does that leave us?

19 MR. LANIER: Your Honor, if no other party has any  
20 other comments, we respectfully would ask that the sale be  
21 approved. We can upload a revised sale order reflecting the  
22 changes that we just discussed to the redline, to the version  
23 at 754.

24 THE COURT: All right. And anyone else wish to be  
25 heard?



1 All right. Again, I know that this is complicated,  
2 and I very much appreciate everybody's willingness to try and  
3 find a way to get this done. I do find that I have  
4 jurisdiction over the proposed sale pursuant to 28 U.S.C.  
5 Section 1334. Sale of estate assets and the assumption of  
6 assignment of various contracts and leases constitutes a core  
7 proceeding under 28 U.S.C. Section 157. I further find that I  
8 have the requisite constitutional authority to enter a final  
9 order consistent with the other sales.

10 I compliment the debtor and its advisors on being as  
11 transparent in their motives and procedures as anyone could  
12 possibly be. Again, in my mind it serves as a model as to what  
13 this should be like, not always what I get. But I think the  
14 sale process, the process the parties have engaged in, is as  
15 transparent as it can be in what the code demands.

16 I will find that the exercise of the business  
17 judgment of the debtor to proceed forward with the sale to  
18 not only constitutes reasonable business judgment, but  
19 represents the exercise of the most prudent business judgment  
20 on behalf of the estate.

21 I will approve the sale subject to, again, the  
22 reservation of all timely-filed unresolved objections to the  
23 assumption and assignment of various executory contracts and  
24 leases to be resolved either by agreement or in a future  
25 proceeding, which I am willing to do on an extremely expedited



1 basis if the parties are not able to find common ground.

2 With that, Mr. Lanier, if you will, I know that there  
3 were other findings and conclusions set forth. Again, the last  
4 order that I had a chance to look at as I read the redline at  
5 754-1, I had looked at the prior sale order which, as we sit  
6 here right now, I can't remember the number. There are other  
7 findings and conclusions which I have read, agree with, and do  
8 adopt in their entirety.

9 To the extent that I've made additional statements  
10 and or findings and conclusions on the record which are not set  
11 forth in the proposed order, they are incorporated by reference  
12 pursuant to Bankruptcy Rule 7052.

13 Mr. Lanier, if you will get those very minor tweaks  
14 that we talked about, if you can get somebody on your team to  
15 do them while we are addressing confirmation, I will -- we will  
16 make sure we get that done today so that Mr. Penn can continue  
17 his good work, and other conversations can continue about  
18 trying to bridge the gap on some of these outstanding issue.

19 MR. LANIER: We will do so. Thank you, Your Honor.

20 THE COURT: Okay. Thank you.

21 All right. Mr. Zuzolo.

22 MR. ZUZOLO: Good afternoon, Your Honor. Kevin  
23 Zuzolo of Akin Gump Strauss Hauer & Feld as counsel to the  
24 debtors. In addition to the sale transaction, we also have  
25 before you today final approval of the debtors' disclosure



1 statement and confirmation of the plan.

2 I want to note that Mr. Michael Robinson, the  
3 company's chief executive officer, that Ms. Lahaie introduced  
4 earlier, is attending the hearing virtually. We will have a  
5 proffer of Mr. Robinson that will be presented during the  
6 evidentiary portion of our confirmation hearing.

7 Your Honor, let me provide a quick road map of how we  
8 got here today, if I may, because this case did take some  
9 twists and turns, but ultimately we are here today with a  
10 successful outcome. And you and many other parties have  
11 already heard a few times of the dual sale process, and  
12 potential equitization of the funded debt that the debtors were  
13 pursuing. But just for purposes of establishing the correct  
14 record for solicitation, I will recite a few of the relevant  
15 facts.

16 The debtors' process -- sales process proceeded. And  
17 when we got to the point where the debtors were prepared to  
18 solicit a plan of -- a plan for acceptance or rejection, the  
19 debtors had received already approval of two of their sales.  
20 But with respect to the third business line, the Eagle sale,  
21 and the data recovery business, there were still -- the debtors  
22 were still receiving interest, but it was unclear whether the  
23 most value-maximizing transaction for these cases would have  
24 been to sell that business or to reorganize around it.

25 And therefore, with respect to the combined plan and



1 disclosure statement that was conditionally approved by the  
2 Court on September 7th, that plan was a dual track plan that  
3 provides for the flexibility of either transaction. And I'm  
4 referring to the first amended combined plan disclosure  
5 statement that was filed at Docket 627, and that's the plan  
6 that went out for solicitation.

7           Your Honor, you've obviously just approved the sale  
8 of the Eagle asset, so it is obvious where we are at today.  
9 But, to aid other parties in interest, and to have a plan that  
10 actually reflected the transaction that is being approved  
11 today, the debtors filed the second amended combined plan  
12 disclosure statement on October 13th at Docket Number 734. And  
13 the revisions to this plan removes the portions that were only  
14 relevant to the equitization scenario, and made other changes  
15 consistent with the Eagle sale. And now this plan contemplates  
16 the distribution of sale proceeds and the wind down of the  
17 debtors' estate.

18           On October 14th, we filed the proposed confirmation  
19 order, and that's at Docket Number 742. I am happy to report,  
20 I believe we have successfully resolved all of the plan  
21 objections, and therefore we have filed a revised version of  
22 the plan earlier today at Docket Number 751, as well as a  
23 revised version of the proposed confirmation order, that is at  
24 Docket Number 753, to reflect those agreed resolutions with the  
25 parties.



1           Your Honor, with that introduction, if I may, I would  
2 propose that I offer into evidence -- in support of our  
3 confirmation hearing today, I have some documents to offer, and  
4 then I would also offer the proffer of our witness,  
5 Mr. Robinson, if that is acceptable.

6           THE COURT: Of course. Let me just check and see.  
7 Does anyone believe that they have an outstanding objection to  
8 confirmation that remains unresolved?

9           All right. Then --

10          MR. STEWART: Your Honor, this is Michael Stewart  
11 from Faegre Drinker Biddle & Reath --

12          THE COURT: Yes, sir.

13          MR. STEWART: -- on behalf of CoBank.

14          THE COURT: Yes, sir, Mr. Stewart.

15          MR. STEWART: We appreciate very much Akin Gump's  
16 efforts to address the CoBank objection. Comparable to HCL, we  
17 have concerns regarding the security of our data. We've got  
18 information regarding thousands of bank customers, and they  
19 have provided language which is helpful.

20                I did -- shortly before the hearing started to ask  
21 Mr. Lanier for a few tweaks. But -- the language that he has  
22 proposed is very close to what would be acceptable, but I would  
23 like him to take a look at those additional tweaks.

24          THE COURT: Mr. Lanier, first of all, are you -- do  
25 you have in your possession the requested tweaks?



1 MR. LANIER: Hold on. I do. Hold on.

2 THE COURT: Then why don't you take a look at them,  
3 unless you were going to do part of the presentation. Perhaps  
4 you can back-channel Mr. Stewart and figure out if you -- if  
5 the two of you have an issue or you don't. Could I ask you to  
6 do that?

7 MR. LANIER: Yes.

8 THE COURT: All right. Thank you.

9 And Mr. Stewart, don't let me forget you. But if you  
10 don't have a resolution -- or even if you do, if you'd just  
11 come back on at the end and just update me, please, sir.

12 MR. STEWART: Will do. Thank you, Your Honor.

13 THE COURT: All right. Thank you.

14 Anyone else?

15 MR. KULBACK: Your Honor?

16 THE COURT: Yes.

17 MR. KULBACK: Your Honor, Jerry Kulback again for  
18 HCL. We are part of the same reservation language that  
19 Mr. Stewart is referring to, so I would ask to be included in  
20 any tweaks to that paragraph and their discussions.

21 THE COURT: Certainly. Mr. Lanier, sounds like your  
22 tweak is getting bigger.

23 All right. Anyone else?

24 MR. LANIER: Understood, Your Honor. I'll let  
25 Mr. Zuzolo continue. I'll work in the background.



1 THE COURT: All right. Thank you.

2 MR. ZUZOLO: Thank you, Your Honor. And I agree.

3 That's fine, yes. There is language in the proposed  
4 confirmation order that we filed that was intended to address  
5 their objections. Happy to see if we can work out any further  
6 issues while we're here today.

7 And as I was saying, I did want to just offer some  
8 documents into evidence if I may. I am referring to the  
9 debtors' amended witness and exhibit list that was filed at  
10 Docket Number 752 prior to this hearing. Is it okay if I refer  
11 to that?

12 THE COURT: Absolutely.

13 MR. ZUZOLO: Thank you. So the first document would  
14 be Number 7 on that list. It's the First Amended Combined  
15 Disclosure Statement and Joint Chapter 11 Plan. The second  
16 document, Number 8, a Certificate of Publication, at Docket  
17 Number 671. Number 9, the affidavit of service for the  
18 combined hearing notice. Number 11, the notice of filing of  
19 plan supplement, at Docket Number 708. Number 13, the Second  
20 Amended Combined Disclosure Statement and Joint Chapter 11 Plan  
21 at Docket Number 734. Number 14, the notice of filing of the  
22 first amended plan supplement at Docket Number 740. Number 15,  
23 the declaration of Alex Orchowski of Kroll Restructuring, the  
24 solicitation and balloting agent, at Docket Number 741. And  
25 Number 16, the Second Amended Combined Disclosure Statement and



1 Joint Chapter 11 Plan at Docket Number 751, which was the one  
2 filed earlier today.

3 That would be the extent of the document submissions,  
4 Your Honor.

5 THE COURT: All right. So let me make sure, because  
6 they're scattered around just a bit. Let me make sure I get  
7 this right. With respect to the amended exhibit list that is  
8 filed at 752, you are seeking the admission of what's  
9 identified on that list as Exhibits 7 through 15. Is that  
10 correct?

11 MR. ZUZOLO: Yes. For purposes of confirmation, I  
12 had I believe skipped over 10 and 12, but I will also move  
13 those in, as well.

14 THE COURT: I was trying to catch up, so let's do  
15 that again. So on that list is 7, 8, 9, 11, 13, 14, and 15.  
16 Correct?

17 MR. ZUZOLO: And Number 16, Your Honor.

18 THE COURT: And 16. Any objections?

19 (No audible response)

20 THE COURT: Then they are admitted.

21 (Debtors' Exhibits 7, 8, 9, 11, 13, 14, 15, and 16  
22 admitted into evidence)

23 MR. ZUZOLO: Thank you, Your Honor. As I mentioned,  
24 I would like to offer the proffer of Mr. Michael Robinson, the  
25 debtors' chief executive officer, for today's hearing, if I



1 may.

2 THE COURT: Certainly. Mr. Robinson, first of all,  
3 good afternoon.

4 MR. ROBINSON: Good afternoon, Judge Jones.

5 THE COURT: So you've done this before. Listen  
6 carefully to the testimony. When the presentation is  
7 completed, I'm going to swear you in. I'm going to ask you if  
8 you listened closely to it, if it's accurate, and if you adopt  
9 it as your sworn testimony in support of confirmation, as well  
10 as final approval of the disclosure statement. Understood?

11 MR. ROBINSON: Yes, sir.

12 THE COURT: Thank you.

13 Whenever you're ready.

14 MR. ZUZOLO: Thank you, Your Honor. If Mr. Robinson  
15 were called to testify, he would state the following: I  
16 currently serve as the Chief Executive Officer and President of  
17 Sungard AS and have served in this position since May 2019. I  
18 also serve on the board of managers of Sungard's ultimate  
19 parent company, Sungard AS New Holdings LLC, and the applicable  
20 governing body of each of the debtors' entities. I also served  
21 as the declarant of the debtors' first-day motions.

22 I actively participated in the negotiation and  
23 transaction contemplated by the plan, including the sale  
24 transaction, and have been approved by the Court. I reviewed  
25 and I'm generally familiar with the terms and provisions of the



1 debtors' plan and disclosure statement, including the plan  
2 supplement; thus, I am familiar with and have personal  
3 knowledge of the matters relating to confirmation of the  
4 debtors' plan including the transactions described therein.

5           The plan is a significant achievement for the debtors  
6 and their stakeholders and it's the culmination of many months  
7 of arm's-length negotiations with the debtors' stakeholders and  
8 third-party purchasers. I believe the plan and disclosure  
9 statement and related exhibits, as well as the plan supplement,  
10 are accurate and correct to the best of my knowledge and belief  
11 and contain adequate information in sufficient detail to enable  
12 holders of claims entitled to vote on the plan to make an  
13 informed decision as to whether to accept or reject the plan.  
14 I believe the documents in the plan supplement, including all  
15 amendments, modifications and supplements, are consistent with  
16 and integral to the plan's implementation.

17           The terms of the agreement contemplated by the plan  
18 are fair and reasonable and were negotiated in good faith and  
19 at arm's length and in the best interest of the debtors' (audio  
20 interference) estate, and all holders of claims and interests.  
21 The plan places claims and interests into ten separate classes  
22 with each class differing from the claims and interests in each  
23 other class in a legal or factual matter -- nature, excuse me  
24 -- and the classifications are based on relevant criteria.

25           The debtors took effort to comply and I believe they



1 did comply with the notice and solicitation requirements under  
2 the Bankruptcy Code, including with respect to the additional  
3 notice that the debtors are proposing to provide today pursuant  
4 to the proposed confirmation order. The debtors solicited  
5 acceptances or rejections of the plan from holders of claims in  
6 Class 3, the only class entitled to both. All Class 3  
7 creditors have submitted a ballot and voted to accept the plan.

8 Based on my knowledge, the plan complies with all  
9 applicable provisions of the Bankruptcy Code and the applicable  
10 confirmation requirements, including but not limited to the  
11 following:

12 The plan provides for equal treatment within classes  
13 and identifies the means of implementation for the plan.

14 I believe that all relevant parties, including their  
15 affiliates and advisors, have acted in good faith in connection  
16 with all of their respective activities relating to formation  
17 of the plan and the solicitation and acceptances of the plan.

18 The plan provides for the appointment of a plan  
19 administrator to oversee and administer the wind-down of the  
20 debtors' estates, and that plan administrator will be selected  
21 prior to the effective date of the plan.

22 The plan does not require any government or  
23 regulatory approval.

24 All holders of claims and interests and all impaired  
25 classes will recover at least as much as they would in a



1 hypothetical Chapter 7 liquidation as evidenced by the  
2 liquidation analysis provided in the plan supplement.

3           The plan provides for the payment in full of all  
4 allowed administrative and priority claims and applicable  
5 statutory fees.

6           The plan provides for the wind-down of the debtors  
7 remaining assets and affairs. Provided that the plan is  
8 confirmed and consummated, all the debtors' remaining assets  
9 will be distributed pursuant to its terms; the debtors' estates  
10 will be dissolved following a wind-down period; and ultimately,  
11 the Chapter 11 cases will be closed. As a result, I believe  
12 that, prior to the closing of these cases, the debtors expect  
13 to have sufficient funds to make all payments contemplated by  
14 the plan.

15           The purpose of the plan is not to avoid taxes or  
16 avoid the application of Section 5 of the Securities Act of  
17 1933.

18           No class of creditors is receiving more than  
19 100 percent of the value of their claims. No class of equal  
20 priority is receiving more favorable treatment under the plan.  
21 No class that is junior to the deemed rejecting classes will  
22 receive or retain property on account of their claims or  
23 interests in such junior class.

24           The releases set forth in Article XII of the plan are  
25 the result of good faith, arm's-length negotiations among the



1 debtors and their key stakeholders and are integral components  
2 of the transaction contemplated by the plan.

3           The releases by holders of claims and interests are  
4 consensual because each releasing party was provided with  
5 notice and an opportunity to opt out of the third-party  
6 releases contained in the plan. The released parties have  
7 provided sufficient consideration and contributions to these  
8 Chapter 11 cases in exchange for the third-party release.

9           The exculpation provisions in the plan represent an  
10 integral part of the plan and are the product of good-faith,  
11 arm's-length negotiation.

12           The injunction provisions of the plan are key because  
13 they enforce the release, exculpation and gatekeeper provisions  
14 that are centrally important to the plan.

15           It is important to the debtors to begin implementing  
16 the proposed transactions contemplated in the plan as soon as  
17 possible so that they can bring a swift conclusion to these  
18 Chapter 11 cases.

19           With that, I submit the proffered testimony of  
20 Mr. Robinson, and ask the Court to admit it into evidence in  
21 support of final approval of the adequacy of the disclosure  
22 statement and confirmation of the plan.

23           THE COURT: All right. Thank you.

24           Mr. Robinson, if you'd please raise your right hand,  
25 sir.



1 MICHAEL ROBINSON, DEBTORS' WITNESS SWORN

2 THE COURT: All right. Thank you. Did you listen  
3 closely to everything that was said?

4 MR. ROBINSON: I did.

5 THE COURT: Did you understand it all?

6 MR. ROBINSON: Yes, I do, Your Honor.

7 THE COURT: Everything that was stated true and  
8 correct, to the best of your knowledge?

9 MR. ROBINSON: Yes, it is, Your Honor.

10 THE COURT: Do you adopt the statements as your sworn  
11 testimony in support of final approval of the disclosure  
12 statement as well as confirmation of the proposed plan?

13 MR. ROBINSON: I do.

14 THE COURT: All right. Thank you, sir.

15 Anyone have any cross-examination for Mr. Robinson?

16 (No audible response)

17 THE COURT: Then, Mr. Robinson, I certainly --

18 MS. CHO: Your Honor?

19 THE COURT: Yes.

20 MS. CHO: Oh, I'm sorry. Shirley Cho, Your Honor, of  
21 Pachulski Stang Ziehl & Jones on behalf of the Committee. I  
22 don't have any cross-exam for Mr. Robinson, but before -- I  
23 didn't know if we were approaching here the part where you're  
24 about to bang the gavel, and I just did want to briefly address  
25 the Court.



1 THE COURT: Oh, no. Of course.

2 Let me ask one more time. Anyone have any cross-  
3 examination for Mr. Robinson? Then --

4 MR. STATHAM: Steve Statham for the U.S. Trustee,  
5 Your Honor.

6 THE COURT: Yes, sir.

7 MR. STATHAM: Sorry. I may not have any questions  
8 for Mr. Robinson, but I know there was a notice issue that the  
9 debtor was concerned about. And before we released him, I was  
10 hoping Mr. Zuzolo might explain what the plan is what the  
11 procedure is going to be regarding that notice. Mr. Robinson  
12 may or may not have testimony or information he needs to relate  
13 to the Court, at least on that point.

14 THE COURT: So, Mr. Statham, I have got Paragraph 37  
15 pulled up on my screen. We're going to talk about it just a  
16 little bit more. I don't think it involves Mr. Robinson. I  
17 was going to tell Mr. Robinson that I did not want him to  
18 leave, but that he was excused as a witness; and if it turns  
19 out I'm wrong about needing Mr. Robinson, then he can certainly  
20 be recalled.

21 Does that work for you, Mr. Statham?

22 MR. STATHAM: Absolutely, Your Honor. Thank you.

23 THE COURT: Thank you.

24 And Mr. Robinson, again, if you'd please hang around,  
25 to put it in plain English.



1 MR. ROBINSON: Yes, Your Honor.

2 THE COURT: All right. Mr. Zuzolo, any additional  
3 testimony that you intend to adduce this afternoon?

4 MR. ZUZOLO: No, Your Honor. That would be the  
5 conclusion of the evidence.

6 THE COURT: All right. Thank you.

7 Anyone else wish to offer any testimony or any  
8 documentary evidence?

9 (No audible response)

10 THE COURT: All right. Then we'll consider the  
11 record closed. Debtor wish to make any closing comments?

12 MR. ZUZOLO: Yes, Your Honor. I would just note for  
13 -- with respect to the confirmation objections, we did file a  
14 reply at Docket Number 744, and that included a chart with  
15 respect to the outstanding objections. We -- at the time we  
16 filed, we had -- still had a number of unresolved objections,  
17 but we have resolved them. I know there's some background  
18 discussions happening with some of the other parties, so we'll  
19 see where we -- end up with there. But I would put the  
20 objections into just a couple broad buckets.

21 We had objections from the Chubb insurers and Chubb  
22 surety providers, which were -- the resolutions were reflected  
23 in the revised plan that we filed. And I was asked to submit a  
24 statement that -- to correct a typo in the resolution  
25 reflecting Chubb Surety's objection. And so I'll refer to



1 Docket Number 751 of our amended plan, second amended plan.

2 And on Page 49 of the redline, and I'm looking at  
3 Article IX.F, Surety Bonds, Subsection (c), there is a  
4 reference in about the fourth line down to the parenthetical  
5 starting on the third line, "Notwithstanding the provisions set  
6 forth in Article XII.B of the plan, including Subsection 4  
7 thereof," there actually is no Subsection 4. That should be  
8 Subsection 1. And we will correct that typo prior to  
9 submitting a final order to Your Honor.

10 Your Honor, there were a few taxing authority  
11 objections that we resolved by adding language to the proposed  
12 confirmation order, which is already reflected -- some of the  
13 language that was already there in the prior version, and we  
14 added some -- two additional parties at Paragraph 34. And we  
15 added reservations of rights language with respect to the FIS  
16 objection at -- that was filed at Docket Number 722.

17 I think I might have hit all of the objections that  
18 were marked as unresolved, other than with respect to the  
19 U.S. Trustee's objection that was unresolved. I understand  
20 that the U.S. Trustee's objection actually has been resolved.  
21 They had objected to the exculpation provisions of the plan  
22 based on the Fifth Circuit's recent decision in Highland. We  
23 had made changes to the exculpated party definition based on  
24 the request of the Trustee. In the alternative, what we've  
25 done is added the -- what we call the "gatekeeper provision"



1 which would require parties to seek -- essentially seek relief  
2 from the Court to the extent that they wanted to prosecute a  
3 claim or cause of action that otherwise would have been subject  
4 to the exculpation parties, but now it's no longer --  
5 exculpation provision, excuse me, but now is no longer part of  
6 that provision based on the changes we've made to accommodate  
7 the U.S. Trustee.

8           So I did just want to note that -- I believe that  
9 that is appropriate under the circumstances. It was  
10 essentially approved by the Highland, and I think it has been  
11 used in other circumstances before Your Honor, and is an  
12 appropriate way to resolve the objection in these cases.

13           THE COURT: All right. Mr. Statham, you agree that  
14 for purposes of today Highland Capital has been addressed?

15           MR. STATHAM: I do, Your Honor. Mr. Zuzolo was going  
16 to talk about one sentence in subpart (i) regarding a claim  
17 that the debtors intended to release under the plan. I was  
18 hoping he could address that. And with that, we'll be  
19 concluded.

20           MR. ZUZOLO: Yes. Give me one second while I just  
21 get there. And I believe, Mr. Statham, this is in the  
22 definition of covered party or covered claims. Is that  
23 correct?

24           MR. STATHAM: Under subpart (i) in Article -- I guess  
25 it's XII.F, reflecting that -- claims that the -- not including



1 claims that the debtor released under the plan. We were hoping  
2 for some clarification on what that exactly is intending.

3 MR. ZUZOLO: Yeah, I mean -- understood. That  
4 language is simply intended to mean that -- to the extent a  
5 claim has been released under the plan, obviously it cannot be  
6 -- not be brought. I don't think there's any issue with this  
7 if somebody believes a claim is not released under the plan and  
8 still proceeds under these procedures to seek relief to pursue  
9 it. Obviously, one of the defenses there is going to be that  
10 that claim has been released under the plan, and it will be  
11 disclosed in the appropriate manner. I think that's all that  
12 was intended by that language.

13 MR. STATHAM: Great. Thanks very much, sir.

14 MR. ZUZOLO: You're welcome.

15 MR. STATHAM: Thank you, Your Honor.

16 THE COURT: All right. Hopefully, as we move  
17 forward, we will revisit the old definitions of direct and  
18 derivative, and expand the gatekeeper just a bit to implement  
19 -- this is just old style. Brimpage will remember what this is  
20 like. But other than that, everyone's too young.

21 Ms. Cho, on behalf of the Committee, did you have  
22 anything you wanted to add?

23 MS. CHO: Yes. That for that cue, Your Honor.

24 Shirley Cho again, for the record. Pachulski Stang Ziehl &  
25 Jones. On with me is Ben Wallen. Just on behalf of Pachulski



1 and (indiscernible) advisors, the Committee's professionals and  
2 the Committee, we wanted to just take this opportunity to  
3 congratulate the debtor and its team on getting the final sale  
4 approved, and really getting this across the finish line,  
5 hopefully here soon.

6 We have reviewed all the redlines put on the docket,  
7 Your Honor, including the second amended plan and confirmation  
8 order. We're happy to hear that the U.S. Trustee's objection  
9 has been resolved. And with that, Your Honor, we have no  
10 objection to entry of the confirmation order.

11 THE COURT: All right. Thank you.

12 Anyone else wish to be heard?

13 THE COURT: Mr. Dale, I see you --

14 MR. STEWART: Your Honor, this is Michael Stewart on  
15 behalf of -- I'm sorry, Your Honor. This is Michael Stewart on  
16 behalf of CoBank. I don't know if Mr. Lanier has had a chance  
17 to look at the tweaks. Similar to the conversation you had  
18 earlier, this is a relatively straightforward business  
19 resolution.

20 CoBank, as we indicated in our objection, was told by  
21 the debtor that we had till the end of January to vacate the  
22 current location. But actually, the way the plan currently  
23 reads, is it is subject to the risk of being told to leave  
24 earlier. We're just looking for assurances that what the  
25 debtor has told us will be reflected in the confirmation order.



1 And I know the debtor is working very diligently with the  
2 landlord there at the present time.

3 THE COURT: So let me ask it a slightly different  
4 way.

5 Mr. Lanier, were the tweaks acceptable?

6 MR. LANIER: We're still running it by our client and  
7 waiting for sign-off, but I don't expect they'll have an issue.

8 THE COURT: All right.

9 MR. ZUZOLO: Your Honor, if --

10 THE COURT: Yes.

11 MR. ZUZOLO: If I may, maybe I can kind of address  
12 kind of a little bit more of the debtors' perspective on this  
13 provision. I understand the concern, right? The current plan  
14 states that leases will be rejected as of the effective date to  
15 the extent that they are not assumed. And we understand that  
16 particular customers have raised the issue with certain  
17 locations that, as we sit here today, yes, would be subject to  
18 that effective date rejection, which is causing some concern to  
19 the extent that our effective date milestone is October 31st.  
20 But, as Mr. Lanier stated, it is the intention that we are  
21 working with the landlords to extend those dates  
22 (indiscernible).

23 And so what we have done in Paragraph 35 is  
24 essentially say that that automatic effective date rejection  
25 provision in the plan is not going to apply to these specific



1 locations. And instead, those locations will not be rejected  
2 until essentially a further order of the Court or opportunity  
3 for a hearing. In the middle of Paragraph 35, we say,  
4 "Notwithstanding anything to the contrary herein or the plan,  
5 the effective date of the rejection for the specified leases  
6 shall not occur unless the preserved objections are either  
7 withdrawn by the specified customers or overruled following a  
8 hearing by the bankruptcy court."

9 THE COURT: No, I --

10 MR. ZUZOLO: So we understand that those parties do  
11 want to preserve their rights with respect to raising issues on  
12 rejection, and that's what we've attempted to do here in this  
13 order.

14 THE COURT: I thought not only did you attempt to do  
15 it, it was a very eloquent way of walking the line. So I got  
16 it. And if anyone else feels differently, happy to hear  
17 arguments, but it seems to be about as clear as it can be with  
18 the additional language.

19 Let me ask Mr. Dale --

20 MR. KULBACK: Your Honor --

21 THE COURT: Yes, sir. Sorry. Go ahead.

22 MR. KULBACK: Your Honor, Jerry Kulback again for  
23 HCL. That provision also applies to HCL. We had reviewed that  
24 prior to today's hearing and that language was acceptable.  
25 Again, I do want to see any tweaks to that before it's final,



1 just to make sure it doesn't change any of our rights.

2 I also want to again mention that while this is  
3 extending the time or deeming no rejection to occur with  
4 respect to the leases, I'm asking again for some assurances  
5 from either the debtor or 11:11 or 365 that services will  
6 actually be provided at those locations. It's different than  
7 just having the lease not being rejected. And what I'm still a  
8 little bit confused about is if 11:11 is looking to close as  
9 early as tomorrow, and employees are going to become employees  
10 of 11:11, but those leases aren't being assumed and assigned to  
11 11:11, who is actually going to be rendering the services?

12 I'm assuming that it's going to be under a transition  
13 services agreement between 11:11 and the debtor, but I haven't  
14 heard that yet on this call, and I would like some assurances  
15 that we will have someone actually providing the services after  
16 the sale closes and after confirmation.

17 THE COURT: All right. So, with respect to the  
18 request for assurance, I'm going to let you have that  
19 conversation offline. I don't think it's appropriate for it to  
20 occur during a confirmation hearing. Again, I think that that  
21 is a commercial discussion that I should not be engaged in.

22 What I will tell you is that to the extent that you  
23 believe that -- and this goes not only for you, but for  
24 everyone -- the protection of data is extremely important to  
25 me. I rank it right behind my affinity for employees. And to



1 the extent that someone believes that there is data that is  
2 endangered, and you can put some concrete representations  
3 behind it, you are free to seek emergency relief. I promise  
4 you that I will take it up promptly and that we will work  
5 through. And also, with my having told everybody that data is  
6 extremely important to me, I am confident that that message  
7 will be carried forward. All right.

8 MR. KULBACK: Thank you, Your Honor. I appreciate  
9 it.

10 THE COURT: Yes, sir.

11 Mr. Dale, I wanted to come back to you. I saw you  
12 talking, but I couldn't hear you. Now I've got --

13 MR. DALE: Your Honor, can you hear me now?

14 THE COURT: I can. Thank you, sir.

15 MR. DALE: Thank you, Your Honor. Charles Dale from  
16 Proskauer Rose on behalf of the debtors' prepetition ad hoc  
17 group of term lenders and post-petition DIP lenders. Your  
18 Honor, I'll be very brief. The good news, I think, for you,  
19 Judge, is that you haven't had to hear very much from me during  
20 this case.

21 Your Honor, this case presented some very serious  
22 challenges, as you'll recall, that was instigated by a  
23 liquidity crisis triggered by power costs, runaway power costs  
24 in Europe. And back in April we started with some very  
25 challenging circumstances. You know, we were going to need to



1 separate three inextricably related businesses from one another  
2 and we weren't sure whether this business would be sold or  
3 whether my clients and others would become the ultimate owners.

4           Fortunately, Your Honor, we encountered Ms. Cho and  
5 her colleagues at Pachulski and their clients. We had a very  
6 nice working relationship with the company and its advisors,  
7 the team at Akin that you heard from, FTI, Houlihan.  
8 Mr. Statham of the U.S. Trustee's Office was very accommodating  
9 to us.

10           And we appreciate everybody pitching in, Your Honor.  
11 But we wouldn't be here today if it weren't for the fact that  
12 Your Honor and your staff were as accommodating and as  
13 accessible as you were. And I just wanted to conclude this  
14 case, at least from our point of view, and hope you won't have  
15 to hear from me again, by thanking you, Judge, for all of the  
16 hard work that's gone into arriving at the place we are today.

17           THE COURT: Thank you for the kind words, and they  
18 pertain to everyone on the call.

19           Anyone else?

20           (No audible response)

21           THE COURT: All right. Then I've got before me a  
22 request for final approval of the debtors' disclosure statement  
23 as well as confirmation of the proposed plan. I do find that I  
24 have jurisdiction over both requests pursuant to 28 U.S.C.  
25 Section 1334. Approval of disclosure statements and



1 confirmation of plans are both core proceedings under 28 U.S.C.  
2 Section 157. Finally, I have the requisite constitutional  
3 authority to enter a final order with respect to both requests.

4 Before I address both those, I wanted to take just a  
5 couple minutes. And I'm always in awe when I watch the best  
6 professionals in the world pivot to match the circumstances of  
7 the case. And there are -- there's certainly ample evidence  
8 that this was one of those cases where the skill sets were just  
9 in full exhibition, and it is just such an honor to watch.

10 Again, I've said it before. I'll repeat it again.  
11 Mr. Dublin, Ms. Lahaie, you have an awesome team. You let the  
12 youngsters do work. You let them develop their skill sets.  
13 That is so important to the future of the profession, as well  
14 as providing the guidance that sometimes listening is always  
15 preferable to talking. And that is very evident in this case.

16 Ms. Cho, again, I don't always get committees that  
17 are rational or reasonable, in my view. But I want to  
18 compliment your committee, as well as your guidance in this  
19 case, about recognizing that value comes from many sources, and  
20 understanding the context of the case and making those requests  
21 and asserting those rights that are appropriate under the case.  
22 So I compliment you for your wisdom and guidance of the  
23 Committee, as well as the Committee's just recognition of where  
24 things were.

25 Mr. Robinson, it's not often that I meet management



1 that is competent, intelligent, and above all practical. You  
2 have exhibited all of those qualities in this case, and I'm  
3 talking both to you as well as your team. You're just front  
4 and center. If you'd done something bad, I'd be yelling only  
5 at you. So it goes both ways.

6 But I very much appreciate the approach. I know this  
7 is not the result that you wanted. But you made the best  
8 decisions you could under the circumstances that you were faced  
9 with, and I compliment the excellence that has been exhibited.

10 There are a whole host of people that made this work,  
11 and I can't go through every single one of you. It would take  
12 forever, and everyone would just turn off their videos at some  
13 point. But I really do appreciate everyone being practical in  
14 their approach. And again, you don't make the facts, you just  
15 deal with what you're presented; and this was a wonderful  
16 example of dealing with a set of facts that were less than  
17 ideal. And often in these cases, when you're asked to redo a  
18 capital stack, the pie's always big enough -- or it's mostly  
19 big enough, and you're just matching up time and cash flows and  
20 that sort of thing. And this one, everyone wanted a pie and  
21 you had a tart, and there really wasn't enough to go around.  
22 And I really appreciate the approach.

23 With respect to the second amended combined plan  
24 disclosure statement, with that portion of the document that  
25 constitutes the disclosure statement, with the benefit of



1 hindsight, I will find that the disclosure statement contains  
2 adequate information as that term is defined under Section 1125  
3 of the Code, and I will give final approval to the disclosure  
4 statement.

5           With respect to the plan itself, I'm required to  
6 conduct an independent analysis both under 1123 and 1129. I  
7 will find, based upon the evidence adduced on the record, my  
8 review of the plan, that the plan satisfies the mandatory  
9 requirements of Section 1123(a), does not otherwise run afoul  
10 of the permissive requirements of 1123(b) or other applicable  
11 sections of the Bankruptcy Code.

12           With respect to Section 1129, again, based upon the  
13 evidence that has been adduced, both documentary as well as  
14 testimonial, I will find that the proposed plan satisfies the  
15 requirements of 1129(a)(1), (a)(2), (a)(3), (a)(4), (a)(5). I  
16 find that the requirement of 1129(a)(6) do not apply to this  
17 case. I'll find that the proposed plan satisfies the  
18 requirements of 1129(a)(7). I'll find that the requirements of  
19 1129(a)(8) have not been met. I'll find that the proposed plan  
20 satisfies the requirements of 1129(a)(9) and (a)(10). As this  
21 is a plan of liquidation, I'll find that (a)(11) has been  
22 satisfied. I'll also find that the requirements of 1129(a)(12)  
23 have been met. I'll further find that (a)(13), (a)(14),  
24 (a)(15), and (a)(16) are not applicable to this case.

25           Having found that all of the requirements of 1129(a)



1 have either been satisfied or are not applicable, other than  
2 1129(a)(8), I'll go to 1129(b). Based upon the evidence, I  
3 will find that the plan does not discriminate unfairly. It is  
4 fair and equitable with respect to each class of claims or  
5 interests that is impaired under and has not accepted the plan.

6 Further find there's only one plan I've been asked to  
7 consider. Therefore, the requirements of 1129(c) have been  
8 satisfied.

9 And I appreciate Mr. Zuzolo learning 1129(d). I  
10 always like it when someone addresses that. Makes me happy.  
11 But I will find that principal purpose of the plan is not the  
12 avoidance of taxes or the avoidance of the application of  
13 Section 5 of the 1933 Securities Act.

14 Further find that 1129(e) is not applicable to this  
15 case. And based upon those findings and conclusions, and again  
16 subject to the submission of a conforming proposed order -- I'd  
17 also like a conforming copy of the plan disclosure statement  
18 filed -- I will confirm the second amended plan, again, as  
19 supplemented by the plan supplement and as amended on the  
20 record here this afternoon.

21 I do want to -- if we could, Mr. Zuzolo, I do want to  
22 -- if we could go to Paragraph 37, which was the due process  
23 protection provision. And again, I --

24 MR. ZUZOLO: Sure thing.

25 THE COURT: -- I don't know who came up with the idea



1 -- great idea. Again, it's just an example of taking something  
2 that Judge Isgur did with respect to one problem and adapting  
3 it to deal with another issue. I think that, again, it's an  
4 eloquent solution.

5           There is a hearing date that is there with a blank,  
6 and I'll set it -- you had requested October 26th. I'll set it  
7 October 26th at one o'clock Central. I do, if in that --

8           MR. ZUZOLO: Thank you, Your Honor.

9           THE COURT: I do, in that sentence -- you see the  
10 language after the time that says, "and if no objections are  
11 filed, the debtor will file a notice canceling the conference"?  
12 That's kind of what got you in trouble in the first place.  
13 Take it out. Have somebody show up. I'll be there. It will  
14 take five minutes, and it meets a due process requirement that  
15 you're trying to deal with.

16           I also would like for you -- to the last sentence,  
17 since we're setting up a process, I want you to delete that  
18 last sentence that begins "Any person or governmental unit."  
19 To the extent that the right exists, we're not changing it, and  
20 I don't want to create an additional right. What we're  
21 proposing to do is to see if there's anybody out there. If  
22 there is, I'll set the schedule. I don't want people acting  
23 outside that schedule.

24           I also think that it is imperative that we get this  
25 done as quickly as we can. I do think there's been cause



1 established to have the 14-day stay waived and to have a plan  
2 -- or to have confirmation order effective upon entry.

3           Let's see. I think that's -- again, I think that's  
4 everything. I do think that the tweaks to deal with the  
5 Highland Capital decision, which obviously you folks didn't  
6 know about when the original version was filed. Again, this is  
7 one of those things -- I actually think when you think about  
8 this, this is actually helpful from -- giving enforceability to  
9 those issues in a plan that we've always worried about  
10 slightly. And I think with continued development of, including  
11 release provisions that deal with direct and derivative claims,  
12 as well as expanding how the gatekeeper injunction, which I've  
13 long been an advocate of -- you'll find them in things I've  
14 done going back for 30 years -- couple of tweaks here and there  
15 and actually plans and the enforceability of the plans are  
16 actually strengthened, not weakened. But again, I got it.  
17 That's my opinion and you don't care about that, on that issue.

18           With that, unless -- or let's talk about timing. I  
19 would like to get this done today. I want to get Mr. Penn  
20 focused on getting this done, because I do want to make sure  
21 that as many jobs as can be preserved are preserved, and that a  
22 closing occurs as quickly as possible.

23           I'd like to get all of the tweaks made to the orders  
24 and uploaded today, and I'm committed to not leaving until I've  
25 signed those. Mr. Zuzolo, do you think that's possible today?



1 MR. ZUZOLO: Your Honor, I certainly do think that's  
2 possible today, and I was going to suggest that we certainly  
3 will endeavor to do that.

4 THE COURT: So just remember the longer I sit here  
5 with nobody to talk to, the crankier I get. So hopefully that  
6 will expedite the process for everyone.

7 Mr. Penn, is there anything else that you need from  
8 me to assist in moving forward?

9 MR. PENN: No, Your Honor. Thank you. But I will  
10 tell you that we have reviewed the revised order that the Akin  
11 team sent over and have signed off on it, so we're not a holdup  
12 on this one.

13 THE COURT: Got it. All right. So there will be  
14 just a couple of more tweaks. I don't think that you'll care  
15 about any of them, but you do have one more version that you're  
16 going to need to take a quick look at. All right?

17 MR. PENN: Will do.

18 THE COURT: All right. Anything else from anybody?

19 MR. STATHAM: Your Honor, Steve Statham. May I  
20 briefly be heard?

21 THE COURT: Of course.

22 MR. STATHAM: Thank you, Your Honor. I was of the  
23 understanding that a significant block of folks actually hadn't  
24 received their opt-out opportunities. And while I would agree  
25 with the Court that the due process protection built in



1 Paragraph 37 touches on that, it wasn't clear to me that these  
2 folks were actually going to get their opt-out opportunities.  
3 And I'm reluctant to let go until I at least hearing something  
4 to the effect that there's an opt-out option that's out there,  
5 to the extent these folks haven't been given one.

6 THE COURT: So Mr. Statham --

7 MR. ZUZOLO: Your Honor?

8 THE COURT: Of course. Go ahead.

9 MR. ZUZOLO: I just wanted to correct something. It  
10 is not an issue of folks not having an opportunity to opt out.  
11 The opt-out notices or the opt-out ballots were all properly  
12 sent out to all creditors that should have received it. The  
13 one piece that has the issue with the service was simply when  
14 we reset the date to notify parties of the new plan objection  
15 and opt-out deadlines, that was the service issue. It was not  
16 an issue of folks not receiving the opportunity to opt out.

17 MR. STATHAM: Got it. Thanks, Your Honor. That  
18 resolves my concern. I appreciate the Court's indulgence.

19 THE COURT: No, no, no. Certainly. Again, I had  
20 trouble following that through, as well. And that was the  
21 comment I made about canceling hearings. You don't want ever  
22 want to cancel the hearings. You have somebody show up and  
23 continue the hearing. That way, you stay out of trouble.

24 MR. STATHAM: Yes, sir.

25 THE COURT: All right. Anything else from anyone?



1 (No audible response)

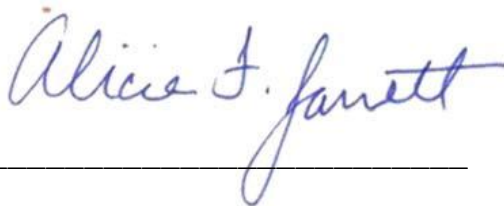
2 THE COURT: All right. Then everyone have a  
3 wonderful day, and we'll be adjourned. Thank you.

4 (Proceedings concluded at 3:42 p.m.)

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14 **C E R T I F I C A T I O N**

15  
16 I, Alicia Jarrett, court-approved transcriber, hereby  
17 certify that the foregoing is a correct transcript from the  
18 official electronic sound recording of the proceedings in the  
19 above-entitled matter.

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21  
22   
23

24 ALICIA JARRETT, AAERT NO. 428

DATE: October 18, 2022

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